IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. .....

O. C. RAWDON, as President of the Board of Trustees, Mansfield Independent School District et al,

Petitioners,

VS.

NATHANIEL JACKSON, a Minor, by his Father and Next Friend, W. D. JACKSON, et al,

Respondents.

PETITION FOR WRIT OF CERTIORARI

Petitioners pray that a writ of certiorari issue to review the actions of the United States Court of Appeals for the Fifth Circuit reversing the judgment of the trial court.

Citation of Opinion Below

The opinion of the Court of Appeals, *Nathaniel Jackson, a Minor, by his Father and Next Friend, W. D. Jackson, et al, vs. O. C. Rawdon, as President of the Board of Trustees of Mansfield Independent School District, et al,* has not yet been officially reported but is contained in the Appendix attached hereto.

Jurisdiction

It is contended by Petitioners that the United States Court of Appeals for the Fifth Circuit has rendered a decision in conflict with the decision of the Supreme Court of the United States in the case of *Brown et al vs. Board of Education et al,* 347 U.S. 483, 74 Sup. Ct. 686 (1954); 349 U.S. 294; 75 Sup. Ct. 753 (1955), in which opinion the United States Court of Appeals for the Fifth Circuit held in effect contrary to the decision in the Brown case, supra, when it held that the lower court should not have taken into consideration "adjusting and reconciling public and private needs".

Questions Presented for Review

1.

It is the contention of the Petitioners herein that the language in the Brown case, supra, reading as follows:

"Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. * * *"

should be construed as same was construed by the United States District Court which was the local court as spoken of in such case; that the local District Court, being familiar with the circumstances, the demeanor of the witnesses and the matter at hand, had ample evidence to find as he did find that the defendants in the court below, the petitioners herein, were acting in good faith according to local conditions and local problems in meeting the mandate of the Supreme Court in such case, and that the facts in the lower court were sufficient under all of the circumstances to sustain the

judgment of the lower court in denying the relief sought by the plaintiffs in the lower court and dismissing the plea for injunction as being premature.

It will be noted in the decision of the lower court that the dismissal was without prejudice to the rights of plaintiffs to reassert their contentions at any time they felt that the Board of Trustees of Mansfield Independent School District were procrastinating or not acting in good faith.

2.

The United States Court of Appeals for the Fifth Circuit has decided an important question of Federal law which has not been but should be settled by this court, that is to say, as to whether or not a reasonable interpretation of the opinion in the Brown case allows time to the lower courts and to school boards for "adjusting and reconciling public and private needs."

3.

That the lower court is the court which was designated by the Supreme Court to determine good faith as applied to a given fact situation.

4.

That the United States Court of Appeals is bound as to the facts in the case by the facts found by the trial court.

Statement

For the sake of brevity, we shall refer to the petitioners as "Mansfield" and to the respondents as "Jackson". The printed record of the court below is voluminous and is separately presented.

On October 7, 1955, three minor plaintiffs, residents of the Mansfield School District, who were Negroes, sought injunction to prohibit Mansfield from denying to them and those similarly situated entrance into the Mansfield Public Schools. Jurisdiction of the Court was invoked under Title 28, Section 1331 of the United States Code. In addition to injunctive relief, plaintiffs prayed for declaratory judgment declaring certain articles of the Statutes of the State of Texas unconstitutional, such Articles being Article 2900, Articles 2922-13 and 2922-15, to the extent that they required or sanctioned the segregation of students in the public schools of Texas on the basis of race and color.

Issue was joined by the filing of an answer by Mansfield on November 2, 1955. The petition of plaintiffs prayed for temporary and permanent injunction, but on the hearing of the case withdrew their plea for temporary injunction, and the case was tried on the issue of permanent injunction.

Only two of the plaintiffs testified in the case and both testified that they were happy and well adjusted at I. M. Terrell High School in Fort Worth, Texas,

and were taking vocational courses not available to them in the curriculum at Mansfield High School, and that their only reason for wishing to attend Mansfield High School was the inconvenience of early leaving and late returning to and from their homes. The testimony also showed that the white students in this same rural school district had to arise just as early and travel just as far as did the plaintiffs.

The Court below, on ample evidence, determined that Mansfield was a rural school district with a rural school board composed primarily of farmers and that because of public sentiment in the community, they had many problems relative to the breaking of the traditions of generations; that such board had, however, given prayerful consideration, thought and energy to a solution of the problems; that they had studied articles in magazines and newspapers, had held numerous meetings, passed resolutions and appointed a committee to work out a plan for integration; that they had made a bona fide start toward obeying the law to the best of their ability. They assured the Court by their testimony that they were continuing their efforts to work out desegregation; that administrative steps had been taken whereby the students affected were given free transportation to I. M. Terrell High School in Fort Worth on a special bus, which special bus had been placed in operation at the request of the plaintiffs themselves.

The lower court further interpreted the decision of the United States Supreme Court as rendered in the

Brown case, supra, to the effect that such court allowed time for achieving the end of segregation, and further found that the school board had shown that it was making a good faith effort toward integration and that it should have a reasonable length of time to solve its problems and end segregation. The lower court quoted from the Brown case, supra, as follows:

> "* * * the courts will be guided by equitable principles * * * characterized by a practical flexibility * * * and by a facility for adjusting and reconciling public and private needs. * * *"

Argument

The Petitioners earnestly argue that the judgment of the District Court correctly construed the opinion of the Supreme Court of the United States in the Brown case, supra; that the lower court, sitting as a Judge of the credibility of the witnesses and the weight to be given their testimony, was amply justified in rendering a decision finding that Mansfield was proceeding in good faith toward desegregation; that the opinion in the Brown case, supra, when it said:

> "In fashioning and effectuating the decrees the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. * * *"

meant that public and private needs were to be taken into consideration in effectuating decrees and further left this matter to the local court, which is the United States District Court, when it said:

> "* * * Because of their proximity to local conditions and the possible need for further hearings, *the courts which originally heard these cases can best perform* this judicial appraisal."

Conclusion

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

R. K. HANGER
E. A. CANTEY
J. A. GOOCH

By E. A. Cantey
1500 Sinclair Building
Fort Worth 2, Texas
Attorneys for Petitioners.

Along with this petition, there are enclosed certified copies of the proceedings in the court below and in the United States Court of Appeals for the Fifth Circuit, and ten copies of the printed record in the United States Court of Appeals for the Fifth Circuit.

As Appendix to this petition will be found the opinion of the United States Court of Appeals for the Fifth Circuit and the judgment of the United States Court of Appeals based on such opinion.

Proof of Service

Copies of this petition, proceedings in the court below, proceedings in the United States Court of Appeals, including copies of the opinion and judgment of the United States Court of Appeals, have been this the 11th day of September, 1956, mailed, postage prepaid, to the attorneys for Respondents, who are:

L. Clifford Davis
401 East Ninth Street
Fort Worth, Texas

U. Simpson Tate
2600 Flora Street
Dallas, Texas

E. C. Canty

Of Counsel for Petitioners

APPENDIX I

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15927

NATHANIEL JACKSON, a minor, by his Father and Next Friend, W. D. JACKSON, ET AL.,
Appellants,

versus

O. C. RAWDON, As President of the Board of Trustees, MANSFIELD INDEPENDENT SCHOOL DISTRICT, ET AL.,
Appellees.

Appeal from the United States District Court for the Northern District of Texas.

(June 28, 1956.)

Before HUTCHESON, Chief Judge, and RIVES and BROWN, Circuit Judges.

HUTCHESON, Chief Judge: Brought October 7, 1955, against the defendants, Board of Trustees of the Mansfield Independent School District, the president and members of the board, and the superintendent of the district, by negro children of school age, to redress the deprivation, under color of state law, of their rights secured by the Constitution of the United States, the suit sought a declaratory judgment and an injunction.

The claim was that, though plaintiffs, minors between the ages of six and twenty-one years, have met all lawful requirements for admission to the Mansfield High School, maintained by the Mansfield Independent School District, the defendants denied them admission thereto because, and only because, they were colored, and there being no negro high school in the district, they were, pending recognition of their right to attend Mansfield High School, obliged to accept bus service to Fort Worth to attend the negro high school there.

Defendants filed a motion to dismiss, in which, admitting that the Supreme Court of the United States, in *Brown v. Board of Education*, 347 U.S. 483, had more than a year earlier determined that state laws and state constitutions which prescribed segregation were unconstitutional, and that the Supreme Court of Texas, on Oct. 12, 1955, in *McKinney v. Blankenship*,

282 SW(2) 691 had recognized that the decision in that case had had the specific effect of rendering unconstitutional the segregation provisions of the constitution and laws of Texas, and, asserting: that desegregation could not be accomplished over night; that the problem of desegregation of the public school system of the Mansfield District is under intensive study; that so far they have not had time to adjust to the transition; and that they are making every effort to make such adjustment and will make such adjustment as soon as time and circumstances will permit; insisted that the suit was premature and should be dismissed.

For answer, admitting some and denying other paragraphs of the complaint and realleging, as they had in their motion to dismiss, that the defendants are obeying the mandate of the Supreme Courts of the United States and of the State of Texas, in attempting to solve the problem in an equitable manner, defendant urged that the remedy sought by plaintiffs is premature and the suit should be dismissed.

Thereafter, the case came on for hearing and was fully heard upon evidence which, consisting in part of testimony as to the substitute arrangements the board had made for sending negro children to Fort Worth by bus so that they would not have to be admitted to the Mansfield High School, fully established plaintiffs' claims by developing that there were no administrative difficulties which had to be overcome in order to admit the plaintiffs to the Mansfield High

School but only, as clearly shown by the testimony of R. L. Huffman, the superintendent, a difficulty arising out of the local climate of opinion,[1] requiring the board, in its opinion, to discriminate against plaintiffs by denying them access to the only high school in Mansfield, while permitting white children to attend it. Cf. *Whitmore v. Stilwell*, 227 F(2) 188.

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[1] Q: Is that your position?

A: That is right.

Q: Now what conditions would you have to bring about in order to carry out the court's mandate?

A: That would be hard to answer in a concise statement due to the fact that we have been in the two fold school system so long in Texas *we just would not have time to enter into the many details that would have to be worked out in order to sell such a program in the local community.*

Q: What were some of those details?

A: Well it would be the breaking down of the old traditions that had been established. It would be getting two different types of people ready for something new which the board deems will take time.

Q: It would be the breaking down of old traditions and getting the people to accept the change?

A: That is right, getting both sides of a question into a position to accept.

Q: So that was the barrier that you had, that was the thing that kept you from going ahead, is that correct?

A: That is one of the main barriers.

Q: All right, sir, did you have any others?

A: Well not other than just the fact that we had details to work out in placing these students where they have not been with the whites and the colored and this could not be done we thought just over night.

His final answer was: "The school board if given sufficient time can and will work out the problem to the mutual satisfaction of all the people in the community and when conditions have been made such and justifiable, it will be done."

In answer to questions as to when the matter of admission of colored students on a desegregated basis in the Mansfield District would likely come about, Huffman stated that the board and each member of it had had discussions with the citizenship of the town, and the board had passed a resolution that the schools would be kept segregated during the year 1955-56.

In answer to further inquiry as to what his contention now is, he stated: "The court ruled we had a reasonable length of time to meet the different requirements, and we would not have time on that short notice, from May 17, 1954 until May of 1955, or between May of 1955 to September 2, 1956, to carry out the mandate of the court".

Mr. Gibson, secretary, and a member of the school board, testified that he was on a committee to study segregation and that it was still in operation, and "We are going to try to desegregate as soon as we think it is practicable at all."

> Q: In other words, you are going to desegregate when the tension or the reaction of your community to desegregation will be neutralized?
>
> A: As much as possible.

Asked: "Has your board made any decision at all as to what it is going to do about the year 1956-57?", the witness answered: "No" and the board had no plan beyond the one already announced for the present session.

Mr. Wilshire, a school board member, testified that the board had reached no conclusion with respect to desegregation.

> Q: Have you run into any problems?
> A: We have.
> Q: What are your problems?
> A: Dissatisfaction among the community.
> Q: When you say dissatisfaction among the community, what is the community dissatisfied about?
> A: Well, they are not satisfied with desegregation and are not ready to enter into it right at the present time, and we have reported that to the board.
> Q: What plan does your board have of conforming to the mandates of the two decisions?
> A: I believe if we were given sufficient time we could work the problem out but at the present time we have no plan.

The testimony ended, the district judge, declining to enter a declaratory judgment as prayed for in pars. (a) (b) (c) and (d) of plaintiffs' prayer, declaring and establishing the constitutional rights of plaintiffs, not to be discriminated against, and treating the suit as only for injunction, held:

> "The School Board has shown that it is making a good faith effort toward integration and should have a reasonable length of time to solve its problems and end segregation in

> the Mansfield Second School District. At this time this suit is precipitate and without equitable justification."

So finding and holding, he ordered the action dismissed without prejudice and plaintiffs have appealed.

Here, citing cases[2] in complete support, appellants insist that the board has not brought itself within the protection of the "prompt and reasonable start" requirements of the Supreme Court. Invoking the settled doctrines: (1) that in a suit of this kind plaintiffs have an absolute right to have their constitutional rights declared; and (2) that the defendants may not, upon consideration of the merely personal viewpoints of the trustees and of the citizens generally, that the community is not psychologically ready for the change, continue the practice of segregation in the high school; they insist that the judgment was wrong, and must be reversed, while appellees vigorously defend the judgment as within the sound discretion of the district judge and right.

We think it clear that, upon the plainest principles governing cases of this kind, the decision appealed from was wrong in refusing to declare the constitutional rights of plaintiffs to have the school board, acting promptly, and completely uninfluenced by private and public opinion as to the desirability of

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[2] Brown et al v. Bd. of Education, et al, 237 U.S. 483; 349 U.S. 294; Clemens v. Board of Education, 228 F(2) 853; McKinney et al v. Blankenship et al, 282 S.W.(2) 691; Willis v. Walker, 136 F. Supp. 181; to which may be added Whitmore v. Stilwell, 227 F(2) 187.

desegregation in the community, proceed with deliberate speed consistent with administration to abolish segregation in Mansfield's only high school and to put into effect desegregation there.

Had the court made such a declaration and retained the cause for further orders necessary to implement it, deferment to a later time of action on the prayer for injunctive relief, if necessary, may well have been within his discretion. The issuance of such a declaration of rights with retention of the case would have given the court the means of effetually dispelling the misapprehension of the school authorities as to the nature of their new and profound obligations and compelling their prompt performance of them. This misapprehension appears from the undisputed evidence of superintendent and board members which plainly shows that the board had not given serious consideration to its paramount duty not to delay but to proceed with integration in respect to the sole high school in Mansfield, but, quite to the contrary, had taken definite action to continue segregation there throughout the coming school year. Indeed it had declined to fix or even give serious consideration to the time when it would cease, and the only reason it gave for not instituting it at once in the case of the plaintiffs and the Mansfield High School was its concession to public opinion.

The judgment is, therefore, REVERSED and the cause is REMANDED with instructions for further and not inconsistent proceedings, including instruc-

tions to the district court that it declare: that plaintiffs have the right to admission to, and to attend, the Mansfield High School on the same basis as members of the white race; that the refusal of the defendants to admit plaintiffs thereto on account of their race or color is unlawful; that it order the defendants forever restrained from refusing admission thereto to any of the plaintiffs shown to be qualified in all respects for admission; and that it retain jurisdiction of the cause for further orders at the foot of the decree to promptly, fully, and effectively carry out this mandate and the orders of the district court entered pursuant thereto.

REVERSED and REMANDED with directions.

A True Copy:
Teste:

/s/ John A. Feehan, Jr.
Clerk of the United States Court of
Appeals for the Fifth Circuit.

APPENDIX II

JUDGMENT.

Extract from the Minutes of June 28th., 1956

NATHANIEL JACKSON, a minor, by his Father and Next Friend, W. D. JACKSON, ET AL.,

No. 15927 versus

O. C. RAWDON, As President of the Board of Trustees, MANSFIELD INDEPENDENT SCHOOL DISTRICT, ET AL.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with instructions for further and not inconsistent proceedings, including instructions to the district court that it declare: that plaintiffs have the right to admission to, and to attend, the Mansfield High School on the same basis as members of the white race; that the refusal of the defendants to admit plaintiffs thereto on account of their race or color is unlawful; that it order the de-

fendants forever restrained from refusing admission thereto to any of the plaintiffs shown to be qualified in all respects for admission; and that it retain jurisdiction of the cause for further orders at the foot of the decree to promptly, fully, and effectively carry out this mandate and the orders of the district court entered pursuant thereto;

It is further ordered and adjudged that the appellees, O. C. Rawdon, As President of the Board of Trustees, Mansfield Independent School District, and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

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